

08-1519
LOCALLY ASSESSED PROPERTY
SIGNED 01-26-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF (X)
COUNTY, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-1519

Account No. N/A

Tax Type: Personal Property /
Locally Assessed

Tax Years: 2004 through 2007

Judge: Marshall

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, COMPANY A

For Respondent: RESPONDENT REP 1, (X) County Assessor

RESPONDENT REP 2, (X) County Assessor's Office

RESPONDENT REP 3, Property Tax Division of the Utah State Tax Commission

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 15, 2008. Petitioner ("Taxpayer") brings this appeal from the decision of the (X) County Board of Equalization ("County") regarding the valuations for personal property that resulted from a personal property audit for the years 2004 through 2007. The County contracted with the Property Tax Division to conduct an audit. The Property Tax Division issued the results of its audit on October 2, 2007, which was subsequently submitted to the County. The County issued a revised tax notice, which Taxpayer appealed to the County Board of Equalization. The County

denied the appeal on June 2, 2008. Taxpayer then timely appealed pursuant to Utah Code Ann. §59-2-1005 to the Utah State Tax Commission. A summary of the signed statement¹ values, Board of Equalization values based on the audit, and Taxpayer's requested values follows:

<u>Year</u>	<u>Signed Statement</u>	<u>Board of Equalization</u>	<u>Taxpayer</u>
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007	Not Provided	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that "All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law." Utah Code Ann. §59-2-103(1) (2004, 2005, 2006).

For the 2007 tax year, Utah Code Ann. §59-2-103(1) was amended to read, "[a]ll tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value." *See* Utah Code Ann. §59-2-103(1) (2007).

"Fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts..."

Utah Code Ann. §59-2-102(12) (2004-2007).

"The County Assessor shall assess all property located within the county which is not required by law to be assessed by the Commission." Utah Code Ann. §59-2-301 (2004-2007).

The county assessor is required to ascertain the names of all owners of property subject to taxation by the County, as set forth in Utah Code Ann. §59-2-303(1), below:

(1) Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year, unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice. In that case, any tax notice may be mailed, and the tax assessed, to the new owner. No mistake in the name or address of the owner or supposed owner of property renders the assessment invalid.

¹ See Utah Code Ann. §59-2-306.

Utah Code Ann. §59-2-303(1) (2004-2007).

To ascertain assessable personal property, and the ownership thereof, the county assessor may request a signed statement, as set forth in Utah Code Ann. §59-2-306, below in pertinent part:

- (1) The county assessor may request a signed statement from any person setting forth all the real and personal property assessable by the assessor which is owned, possessed, managed, or under the control of the person at 12 o'clock noon on January 1. This statement shall be filed within 30 days after requested by the assessor.

Utah Code Ann. §59-2-306(1) (2004-2007).

The Commission has adopted Rule R884-24P-33 regarding the assessment of tangible personal property. This rule provides percent good tables to determine a value based on different classes of tangible personal property. Value is calculated by applying the percent good factor against the acquisition cost of the property. The rule provides a definition for “acquisition cost”, set forth below:

(1) Definitions

- (a) “Acquisition cost” means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales tax.
 - (i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.
 - (ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

Utah Admin. Rule R884-24P-33 (2004-2007).

A taxpayer may appeal the valuation of personal property with the County and the Commission, as provided in Utah Code Ann. §59-2-1005, below:

- (1) The county legislative body shall include a notice of procedures for appeal of any personal property valuation with each tax notice. If personal property is subject to a fee in lieu of tax or the uniform tax under Article XIII, Sec. 14, Utah Constitution, and the fee or tax is based upon the value of the property, the basis of the value may be appealed to the commission.
- (2) Any taxpayer dissatisfied with the taxable value of the taxpayer's personal property may appeal by filing an application no later than 30 days after the mailing of the tax notice.
- (3) After giving reasonable notice, the county legislative body shall hear the appeal and render a written decision. The decision shall be rendered no later than 60 days after receipt of the appeal.

- (4) If any taxpayer is dissatisfied with the decision of the county legislative body, the taxpayer may file an appeal with the commission as established in Section 59-2-1006.

Utah Code Ann. §59-2-1005 (2004-2005).

In 2006, Utah Code Ann. §59-2-1005 was amended, as follows:

- (1) For personal property assessed by a county assessor in accordance with Section 59-2-301, the county legislative body shall include with the signed statement required by Section 59-2-306 a notice of procedures for an appeal relating to the value of the personal property.
- (2) (a) If personal property is subject to a fee in lieu of tax or the uniform tax under Article XIII, Sec. 2, Utah Constitution, and the fee or tax is based upon the value of the property, the basis of the value may be appealed to the commission.
(b) For the personal property described in Subsection (2)(a), a taxpayer may make an appeal relating to the value of the personal property by filing an application with the county legislative body no later than 30 days after the mailing of the tax notice.
- (3) (a) After giving reasonable notice, the county legislative body shall hear an appeal filed in accordance with Subsection (2) and render a written decision.
(b) The written decision described in Subsection (3)(a) shall be rendered no later than 60 days after receipt of the appeal.
- (4) If any taxpayer is dissatisfied with the decision rendered in accordance with Subsection (3) by the county legislative body, the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.

Utah Code Ann. §59-2-1005 (2006-2007).

The Tax Commission is required to oversee the just administration of property taxes under Utah Code Ann. §59-1-210, below:

The powers and duties of the commission are as follows...

- (7) to exercise general supervision over assessors and county boards of equalization including the authority to enforce Section 59-2-303.1, and over the other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination.

Utah Code Ann. §59-1-210 (2004-2007).

In order to prevail, a party requesting a value that is different from that determined by the county board of equalization must: not only demonstrate that the value established by the county board of equalization contained error; but must also provide the Commission with a sound evidentiary basis for reducing the value to the amount proposed by the party. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

Taxpayer is requesting that the values for each of the years at issue be reduced below the original assessed value based on the signed statements the Taxpayer submitted to the County. The County is requesting the Commission sustain the Board of Equalization values based on the audit. The Taxpayer raised three arguments in support of its requested value; that certain property had been incorrectly classified, that the audit was based on an incorrect asset list, and that the property was valued higher than the personal property of comparable hospitals.

The Taxpayer is the owner of a hospital that has a total of (X) square feet; the hospital is (X) square feet and the medical office building is an additional (X)square feet. It is a general acute care hospital offering (SENTENCE REMOVED). The personal property consists of major medical and surgical equipment, computers, furniture, and fixtures.

2006 Tax Year

The Taxpayer filed an appeal of its personal property valuation for the 2006 tax year (Tax Commission Appeal No. 06-0680). A hearing was held on July 31, 2007, and the Commission issued its Findings of Fact, Conclusions of Law and Final Decision on October 10, 2007. At issue during the appeal was the classification and depreciation of ultra-sound, catheterization labs, gamma camera, and mobile C-arm equipment.

The doctrine of claim preclusion prevents the relitigation of all issues that were, or could have been, litigated in a prior action. In order for the doctrine of claim preclusion to apply, three elements must be satisfied. "First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits." *Macris & Assoc. v. Neways, Inc.*, 16 P.3d 1214, 1219 (Utah 2000). Both the Taxpayer and the County were parties to the 2006 appeal, satisfying the first element of claim preclusion. Currently, Taxpayer is appealing the valuation of its personal property for the 2004, 2005, 2006, and 2007 tax years. At issue in Appeal No. 06-0680 was the classification of ultra-sound, catheterization labs, gamma

cameras, and mobile C-arm equipment. Taxpayer could, and should, have raised the issue of valuation for the 2006 tax year as a part of Appeal No. 06-0680. Thus, the Commission finds the second element of claim preclusion has been met. Finally, the Commission issued its Final Decision for Appeal No. 06-0680 on October 10, 2007, the decision was based on a hearing on the merits, at which both parties participated. The Commission finds that Appeal No. 06-0680 was a final judgment on the merits, in satisfaction of the third element of claim preclusion. The Commission dismisses Taxpayer's appeal for the 2006 tax year, finding it barred by the doctrine of claim preclusion. Likewise, the County is barred from redetermining the 2006 values based on the findings of an audit completed after the issuance of the decision. The Commission finds that the 2006 values and classification of property cannot be re-litigated by either party.

Property Classification²

The County placed certain equipment including ultra-sound, catheterization labs, gamma camera, and mobile C-arm equipment in Class 7: Medical or Dental Equipment. Taxpayer appealed this classification, and argued that the property should be assessed as either Class 2: Computer Dependent Equipment or Class 12: EDP Equipment. As discussed above, Taxpayer previously appealed the classification of these assets for the 2006 tax year in Appeal No. 06-0680. In its Findings of Fact, Conclusions of Law and Final Decision, the Commission found that the ultrasound machines, catheterization lab systems, gamma cameras, and mobile C-arm machines should be classified and depreciated under the schedule for Class 2: Computer Dependent Equipment.

The doctrine of issue preclusion prevents the parties from relitigating facts and issues that were previously fully litigated. The doctrine of issue preclusion applies if four criteria are met; "(i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits." *Collins v. Sandy City Board of Adjustments*, 52 P.3d 1267, 1270 (Utah 2002). Both the Taxpayer and the County were parties in Appeal No. 06-0680, satisfying the first criteria for issue preclusion. Taxpayer is currently appealing, in part, the classification of certain personal property, identified above, as Class 7: Medical or Dental Equipment, for all years at issue. This was the subject of Appeal No. 06-0680 for the 2006 Tax year, thus the second criteria for issue preclusion is satisfied. Appeal No. 06-0680 resulted in a formal hearing on the merits, which both parties participated in, and the Commission issued its Final Decision on October 10, 2007.

² The property classification tables are set forth in Rule R884-24P-33.

Thus, the third and fourth criteria for issue preclusion are satisfied. Based on the foregoing, the Commission finds that the classification of ultra-sound, catheterization labs, gamma camera, and mobile C-arm equipment for all years at issue is barred by the doctrine of issue preclusion. Such equipment should be classified and depreciated as Class 2: Computer Dependent Equipment for all years, consistent with the Commission's ruling in Appeal No. 06-0680.

2004, 2005, and 2007 Valuation

Taxpayer argues that the County's values for the years at issue are based on an incorrect asset list. The County's asset list has acquisition costs that date back as far as 1996, when Taxpayer acquired the hospital and allocated the purchase price. In 2004, Taxpayer had an inventory performed by COMPANY B. This inventory was not presented at the hearing, nor was a copy provided to the County. Rather, in support of its requested values, the Taxpayer argued that the County is valuing "ghost assets" and submitted appraisals prepared by Property Valuation Services for each of the years at issue.

Taxpayer's representative argued that the Taxpayer is being taxed on approximately \$\$\$\$ in "ghost assets." He explained that ghost assets are those assets that a company places in their records as purchased or comes into use, but remains on the books after they are no longer in service. Taxpayer's representative submitted an article from an IAAO (International Association of Assessing Officers) publication on quantifying ghost assets. Taxpayer's representative stated that ghost assets occur because once an asset has been fully depreciated for income tax purposes, if it is taken out of service, the disposal is not recorded. It is Taxpayer's contention that ghost assets explain some of the discrepancy between the County's and Taxpayer's costs.

The IAAO article sets forth a method to quantify the unrecorded disposals. Several determinations must be made prior to performing any calculations; including, the number of additions to property each year, the amount of disposals reflected on the books for each year, and a price break-down of any expansion. In addition, the Producers Price Index (PPI) should be obtained to determine how much costs have increased over time, and the acquisition costs specifically related to the expansion of the facility should be identified. To determine the amount of unrecorded disposals, the amount of recorded disposals for a given year are restated at the current year's cost based on the PPI. That amount is subtracted from the total replacement purchases to determine the net amount of purchases deemed to be replacement assets that were not accounted for in the recorded disposals for that year. The net amount of purchases is reduced to the prior year's cost using the PPI. Next, the appropriate year of the unreported disposal is determined by multiplying the percentage of the total cost attributable to a given year by the total amount of that year's cost determined to be unrecorded disposal activity. The process is then

continued for each subsequent year. Taxpayer's representative submitted calculations using the above-described method to determine the amount they believe should be subtracted for ghost assets. Taxpayer's representative determined the value of the ghost assets to be \$\$\$\$\$ for 2004; \$\$\$\$\$ for 2005; and \$\$\$\$\$ for 2007.

In support of its requested values, Taxpayer submitted an appraisal for each of the years at issue. The appraisals utilized the cost approach to determine the value of the personal property. The replacement cost new for the personal property was determined by looking at the cost of newly constructed facilities and Marshall and Swift cost tables.

To select the comparables, the appraiser looked at the Diagnosis Related Groups (DRGs) of each hospital. The appraiser stated that the three most common DRGs at the subject are rehabilitation, simple pneumonia and pleurisy, major joint and limb reattachment procedures, heart failure and shock, and renal failure. The appraisal identified fifteen comparable properties that had similar DRGs. The same properties were used for each year at issue, and the value of the personal property was calculated on a per square foot bases, as set forth below:

Hospital	Sq. Feet	Year Built	Cost/ Sq. Foot
COMPANY C (STATE A)	104,000	1999	\$\$\$\$\$
COMPANY D (STATE B)	211,956	2000	\$\$\$\$\$
COMPANY E (STATE C)	393,485	2000	\$\$\$\$\$
COMPANY F (STATE A)	242,059	2001	\$\$\$\$\$
COMPANY G (STATE D)	279,372	2001	\$\$\$\$\$
COMPANY H (STATE E)	232,064	2002	\$\$\$\$\$
COMPANY I (STATE F)	370,000	2003	\$\$\$\$\$
COMPANY J (STATE G)	280,000	2003	\$\$\$\$\$
COMPANY K (STATE H)	175,000	1999	\$\$\$\$\$
COMPANY L (STATE A)	112,000	1999	\$\$\$\$\$
COMPANY M (STATE F)	238,160	2000	\$\$\$\$\$
COMPANY N (STATE H)	86,204	2004	\$\$\$\$\$
COMPAY O (STATE E)	91,768	2004	\$\$\$\$\$
COMPANY P (STATE I)	102,000	2005	\$\$\$\$\$
COMPANY Q (STATE J)	100,000	2006	\$\$\$\$\$

The appraiser used a multiplier to find the current cost per square foot; however the source of those multipliers was not provided. The appraiser determined that the top DRGs of the subject were in the mid-to upper range of the comparable properties, and as a result estimated the replacement cost new utilizing the upper end of the range of comparables. The appraiser determined a replacement cost new per square foot of \$\$\$\$\$ for 2004, \$\$\$\$\$ for 2005, and \$\$\$\$\$ for 2007. The appraiser then multiplied the

replacement cost per square foot by 167,482, the total square footage of the hospital and office building. The appraiser arrived at a total estimated replacement cost new of \$\$\$\$\$ for 2004, \$\$\$\$\$ for 2005, and \$\$\$\$\$ for 2007.

In addition to looking at the costs of equipment for comparable hospitals, the appraisal also utilized the Marshall and Swift valuation tables to determine the replacement cost new. The appraiser determined that the subject property would be categorized as Group II and Group III equipment. Group II equipment is typically installed and becomes part of the real property, but is not included in building costs. Group III is all moveable chattels. Included in the appraisal materials was the valuation information from Marshall & Swift, which is set forth in the table below:

COST	Groups II & III 2004	Groups II & III 2005	Groups II & III 2007
Low	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Average	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Above Average	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
High	\$\$\$\$\$/squaer foot	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot

Taxpayer's representative used the December 2003 Marshall & Swift tables for the 2004 and 2005 values. The December 2005 Marshall and Swift tables were used to obtain the 2007 value. Using Marshall and Swift, the appraiser arrived at an estimated replacement cost new of \$\$\$\$\$ for 2004, \$\$\$\$\$ for 2005, and \$\$\$\$\$ for 2007.

The appraiser utilized the replacement cost new values arrived at by examining comparables to determine a valuation for each year. He multiplied the total estimated replacement cost new for each year by a 50% accrued depreciation ratio for all three years involved. He determined that the subject property was approximately 28, 29, and 31 years old for the years at issue. However, he noted that most of the equipment had been updated and/or replaced during that time and estimated the effective age to be four years. The appraiser estimated that the equipment had an overall economic life of eight years, by evaluating the type of equipment owned by Taxpayer and other comparable hospitals. By applying the 50% appreciation ratio to the estimated replacement cost new, the Taxpayer's appraiser arrived at a value of \$\$\$\$\$ for 2004, \$\$\$\$\$ for 2005, and \$\$\$\$\$ for 2007.

The County asked the Commission to reject Taxpayer's appraisals, and find that the audit amounts are correct determinations of value for the years at issue. The County's representative stated that the personal property audits calculated value in accordance with R884-24P-33(1)(ii), using the cost information provided when Taxpayer purchased the hospital, and allocated the purchase price to the personal property. The County requested an audit of the Taxpayer's personal property because of

changes made to Taxpayer's personal property list using the replacement rather than acquisition costs, based upon the 2004 inventory by COMPANY B. (X) performed a physical inspection on March 19, 2007 as part of her audit. The audit resulted in an increase in value of \$\$\$\$\$ for 2004 and \$\$\$\$\$ for 2005. The County determined the 2007 value based on the audit findings.

The County provided the audit results at the hearing. Included in the audit results was an "audit detail" for 2007; comparisons of the Personal Property Tax Returns submitted by Taxpayer and the audit results for the 2004, 2005, and 2006 tax years; an asset list dated December 31, 2003 that appears to have been taken from the Taxpayer's records, and includes an item description, in-service date, life expectancy, life remaining, book basis, book value, and depreciation; and a list of additions to personal property for 2004 and 2005. In addition, the audit report included copies of relevant administrative rules, IRS rules, FASB (Financial Accounting Standards Board) standards, prior Tax Commission rulings, information on the upgradability on ultrasound equipment, and information on sales of ultrasound equipment.

The "audit detail" report for 2007 included a list of all property, broken down by class; the year the equipment was acquired, with the oldest acquisition date being 1996; the percent good; the cost; and the market value. In addition, comparisons were included for the audit years 2004, and 2005. These comparisons looked at both the personal property statement and audit results for each year, broken down by property class and acquisition year. A summary of the values set forth in the comparisons follows:

	2005 Return Value	2005 Audit Value	2004 Return Value	2004 Audit Value
Class 01	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 02	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 03	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 05	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 07	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 09	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Class 12	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
TOTAL	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

For the 2004 and 2005 returns, the Taxpayer presumably reported based on a historical list of assets. The acquisition years for property went back beyond 1996, some as far as 1976. For each year, the audit used acquisition costs based on the 1996 acquisition of the hospital by Taxpayer, with additions to personal property for subsequent years.

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Commission finds that the Taxpayer has failed to meet its burden of proof.

Taxpayer argued that the County was relying on an incorrect asset list in determining value, and that there was approximately \$\$\$\$ in ghost assets that should be removed. The Taxpayer had a complete inventory completed by COMPANY B in 2004, yet failed to present the inventory at the hearing, or to provide a copy to the County. Without reviewing the inventory, the Commission is unable to determine that the asset list utilized by the County was incorrect. With regard to the ghost assets, the Taxpayer relied on a calculation methodology set forth in the IAAO article, “Quantifying Unrecorded Disposals: Don’t Be Afraid of the Ghost (Assets)”. The article specifically notes that to determine ghost assets, ideally a physical inventory would be completed, but notes that an inventory may be impractical or cost prohibitive. The Commission recognizes that the ghost asset problem does affect a number of companies. However, in this instance, the Taxpayer had a physical inventory performed. The Commission is not persuaded by Taxpayer’s calculation of ghost assets when an inventory was completed in 2004 that would specifically identify which items remained on Taxpayer’s books, though they were no longer in service.

Taxpayer offered an appraisal for each of the years at issue in support of its requested value. The appraisals used the cost approach to determine a value for each of the years at issue. In order to arrive at the replacement cost new for the cost approach, the appraiser looked at both the costs to equip new hospitals on a square foot basis, and the Marshall and Swift cost tables. Though the hospitals used by the Taxpayer purportedly have similar DRGs, it is unknown what equipment the hospitals acquired, and the Taxpayer’s representative provided no documentation for the multiplier used to determine the current cost per square foot. Though this approach may be an acceptable methodology to appraise a newly constructed hospital, whether it is appropriate to apply that methodology to value an existing hospital has not been established. The Taxpayer also used the Marshall and Swift Tables to determine an estimated replacement cost new. The Marshall and Swift valuation tables only provide a general cost, and do not specify the particular equipment involved. It provides only a guideline, the actual equipment owned by the Taxpayer could cost more or less than the price shown on the tables. In comparison, the County provided an audit performed by AUDITOR, who performed a physical inspection of the property at issue. The audit report included an audit detail with a list of the personal property, the year acquired, and cost based on the Taxpayer’s purchase price allocation. The Commission finds that the Taxpayer has failed to

meet its burden of proof to show that the Board of Equalization value was incorrect, and further that the County's values were determined in accordance with Rule R884-24P-33.

Equalization

Taxpayer has also raised an equalization argument, with the Taxpayer's representative stating that other hospitals in Utah were valued lower than the subject. In support of this argument, Taxpayer provided information on six hospitals located in the state. Taxpayer's representative identified the hospitals by name, listed the square footage, the year built, the personal property values for the 2004 through 2007 tax years, and calculated the value per square foot. A breakdown of the Taxpayer's comparable hospitals is provided in the following table:

	SUBJECT	COMPANY R	COMPANY S	COMPANY T	COMPANY U	COMPANY V
Year Built	1976	1980	1979	1903	1983	1975
Total Square Feet	167,482	102,119	82,115	372,549	183,498	148,031
'04 PP Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'04 Value / Square Foot	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'05 PP Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'05 Value / Square Foot	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'06 PP Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'06 Value / Square Foot	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'07 PP Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
'07 Value / Square Foot	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Taxpayer's representative noted that for each of the years at issue, the subject property was valued higher than other hospitals in the state, both overall and on a square footage basis. Taxpayer's representative stated that the value placed on the property by the County falls outside of what it considers an "acceptable range."

In response the County stated that there was not enough information to know whether the hospitals were truly comparable. In addition, the County provided information on the valuation of three

hospitals. The record was held open to allow the County to supplement the information it submitted on the value of comparable hospitals for the 2006 and 2007 tax years. The County's breakdown includes the costs for leased equipment at the hospitals. The square footage, year built, personal property values, and calculated values per square foot are broken out below:

	Year Built	Square Feet	2006 Value	2006 Value/ Square Foot	2007 Value	2007 Value/ Square Foot
Subject	1976	167,482	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY W	1983	112,347	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY X	1998	203,550	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY Y	1972	323,468	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY Z	1984	167,592	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY AA	1999	55,721	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY BB	1980	174,627	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
COMPANY CC	1986	51,516	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In response to the County's supplemental information, the Taxpayer's representative submitted a letter. In that letter, the Taxpayer's representative asked the Commission to disregard COMPANY AA because it has only 51,516 square feet, and as a specialty hospital, would typically have higher costs per square foot. In addition, the taxpayer's representative stated that COMPANY Y appears to be an outlier because of its size and age. Finally, the Taxpayer's representative stated that when the values of the County's comparables are applied to the square footage of the subject, the overall value should be reduced by approximately \$\$\$\$\$ for the 2006 and 2007 tax years.

To prevail on an equalization theory, a taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. In arguing that the Taxpayer's personal property has been valued at a higher value on a per square foot basis than other hospitals, Taxpayer has raised an equalization argument, satisfying the first requirement to prevail on an equalization theory. To show that the value of Taxpayer's personal property deviates more than 5% from the assessed value of comparable properties, the Taxpayer

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provided information on the valuation of five other hospitals located in Utah. The values provided by both the Taxpayer and the County do deviate more than 5% from the subject. However, it is unknown what that percentage will be after the property has been re-classified. Further, there has been no showing that the hospitals used as comparables were true comparables for the subject. It is unknown what services the hospitals perform, how large of a population they service, and what equipment the hospitals own. Without more specific information regarding the comparability of the equipment at Taxpayer's hospital to that of the hospitals offered for comparison, the Commission declines to make an adjustment on an equalization basis.

DECISION AND ORDER

The appeal of the 2006 tax year is dismissed, and the Board of Equalization value for that year abated. The valuation for the 2006 tax year shall be in accordance with the findings of Tax Commission Appeal No. 06-0680. The ultra-sound, catheterization labs, gamma cameras, and mobile C-arm equipment shall be classified and depreciated as Class 2: Computer Dependent Equipment. The remainder of Taxpayer's appeal is denied. The Commission finds that the asset list and values used in the Property Tax Division's audit reflect the fair market value for the 2004, 2005, and 2007 tax years. The County Auditor is ordered to adjust the assessment records as appropriate, in compliance with this order. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2008.

Jan Marshall
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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